

UNITED STATES DISTRICT COURT

Southern District of New York

HUGH JOHN TULLY and PENELOPE CAROL TULLY,
on Behalf of Themselves and All Others
Similarly Situated,

V.

SUMMONS IN A CIVIL ACTION

THE CHARLES SCHWAB CORPORATION,
SCHWAB INVESTMENTS, CHARLES
SCHWAB & CO. INC., CHARLES
SCHWAB INVESTMENT MANAGEMENT,
INC., CHARLES R. SCHWAB, EVELYN
DILSAVER, RANDALL W. MERK, and
GEORGE PEREIRA

08 CV 3652
CASE NUMBER

JUDGE JONES

TO: (Name and address of Defendant)

THE CHARLES SCHWAB CORPORATION, SCHWAB INVESTMENTS, CHARLES SCHWAB & CO.
INC., CHARLES SCHWAB INVESTMENT MANAGEMENT, INC., CHARLES R. SCHWAB,
EVELYN DILSAVER, RANDALL W. MERK, and GEORGE PEREIRA
101 Montgomery Street,
San Francisco, CA 94104

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Daniel W. Krasner, Robert B. Weintraub
WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLP
270 Madison Avenue
New York, New York 10016

an answer to the complaint which is served on you with this summons, within thirty (30) days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

J. MICHAEL McMAHON

APR 16 2008

CLERK

DATE

(By) DEPUTY CLERK

RETURN OF SERVICE

Service of the Summons and complaint was made by me ⁽¹⁾	DATE <u>4/18/08</u>
NAME OF SERVER (PRINT) <u>Robert B. Weintraub</u>	TITLE <u>Of Counsel, Wolf Halderstein</u>
Check one box below to indicate appropriate method of service <u>for plaintiffs.</u>	

- ☒ Served personally upon the defendant. Place where served: Pursuant to written agreement with Morrison & Foerster
- ☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.
- Name of person with whom the summons and complaint were left:
- ☐ Returned unexecuted:
- ☐ Other (specify):

STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL
		<u>—</u>

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on 4/28/08 Date

Robert B. Weintraub Signature of Server

Wolf Halderstein for plaintiffs

270 Madison Ave NY 10017 Address of Server

(by Stuart C. Plunkett, Esq., Counsel for all defendants other than Schwab Investments, service was effected by e-mail and constituted good service as of April 18, 2008. See attached email from defendants' counsel. Robert B. Weintraub 4/28/08

KOP:W 10:10 AM JIM.L

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

Weintraub, Bob

From: Plunkett, Stuart C. [SPlunkett@mofo.com]
Sent: Sunday, April 20, 2008 5:37 PM
To: Weintraub, Bob
Subject: RE: SchwabYP, service

Bob,

Thanks for your message. I am authorized to accept service on behalf of The Charles Schwab Corporation, Charles Schwab & Co., Inc., Charles Schwab Investment Management, Inc., Charles R. Schwab, Evelyn Dilsaver, Randall W. Merk, and George Pereira. This confirms that the documents you sent on Friday constituted good service on these defendants as of that date.

Schwab Investments is represented by Randy Bodner and Rob Skinner of Ropes and Gray.

As we briefly discussed on Friday, I would like to agree on a response date. I suggest that we set the response date as June 17, which is 60 days from the date of service. That is the amount of time defendants would be given under Fed. R. Civ. P. 4(d)(3) if we had formally waived service of process rather than accept service. I also think setting a 60-day period makes sense in light of the procedural considerations generated by the pendency of multiple actions pending in three different district courts. Please let me know if that is acceptable to you.

Regards,

Stuart

From: Weintraub, Bob [mailto:weintraub@whafh.com]
Sent: April 19, 2008 5:24 PM
To: Plunkett, Stuart C.
Subject: SchwabYP, service

Stuart,

Before we talked on Friday, you had left a message that you did not have the authority to accept service. Later, when we talked, you said that in the interim you had learned that your firm had received your clients' authority to accept service. You said you were busy on an emergency, but that you would email me, probably on Saturday, that the documents you received from me in the two emails I sent you on Friday constituted good service.

Please email me no later than 11 a.m. New York time Monday a short unambiguous email that the documents I sent you Friday in the two emails constitutes completed service as if each of your clients had been served effective Friday April 18, 2008. Thank you.

Otherwise, since the process server has had the papers since Friday morning San Francisco time, I will tell the process server to effect service. (If you accept service, as a separate courtesy, I will also have the process server deliver a hard copy set of the papers to your office.)

Second, on the identity of the Ropes & Gray attorney representing Schwab Investments, John M. Loder, Esq. is listed as the R&G contact for Schwab Investments on a recent registration statement. Is he the attorney?

4/28/2008

Thank you.
Bob

Robert B. Weintraub
Wolf Haldenstein Adler Freeman & Herz LLP
270 Madison Avenue
New York, New York 10016
Tel: 212 545-4689 (direct)
212 545-4600 (main)
Fax: 212 545-4653

To ensure compliance with requirements imposed by the IRS, Morrison & Foerster LLP informs you that, if any advice concerning one or more U.S. Federal tax issues is contained in this communication (including any attachments), such advice is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

For information about this legend, go to
<http://www.mofo.com/Circular230.html>

This message contains information which may be confidential and privileged. Unless you are the addressee (or authorized to receive for the addressee), you may not use, copy or disclose to anyone the message or any information contained in the message. If you have received the message in error, please advise the sender by reply e-mail @mofo.com, and delete the message.

4/28/2008